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No. 87-1089

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

Theee Movies of Tarzana,
Petitioner,
vs.

Pacific Theatres, Inc., Columbia Pictures Industries, Inc., Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, Universal Film Exchanges, Inc., Warner Bros. Distributing Corporation and MGM/UA Entertainment Co.,
Respondents.

On Petition for Writ of Certiorari
to the Court of Appeals for the Ninth Circuit

Respondents' Joint Brief In Opposition to Petition for Writ of Certiorari

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Theee Movies Of Tarzana,
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Respondents' Joint Brief In Opposition to Petition for Writ of Certiorari

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ARGUMENT

I. PETITIONER ESTABLISHES NO BASIS FOR GRANT OF CERTIORARI.

Supreme Court Rule 17.1 makes clear that this Court will grant review on writ of certiorari only if: (1) the decision below conflicts with decisions of other federal courts of appeal; (2) the decision below resolved an important question of law not yet settled by this Court; or, (3) the decision below conflicts with a prior decision of this Court. None of those criteria is met here.

The question of law presented by this petition — the standard for summary judgment — has been reviewed by this Court on several occasions in recent years. Nothing

about this petition suggests any basis for further examination of the issue. The Circuits do not differ in their interpretation of this Court's decisions, and petitioner does not suggest that the Ninth Circuit misapplied those standards here.

More importantly, petitioner raises no objection to the substantive standard applied below — "substantial competition" — to evaluate clearances under the Sherman Act's rule of reason; and, petitioner suggests no genuine dispute about any fact material to application of that standard here.

Indeed, petitioner asks this Court to review nothing more than a lower court's routine application of the summary judgment procedure to undisputed facts in an area of well-established substantive law. Nothing distinguishes the decision below from the thousands of other cases decided annually in the lower courts involving issues of antitrust or summary judgment. Thus, respondents believe the petition should be summarily denied.

II. FACTUAL BACKGROUND.

This action was commenced in July 1984; petitioner alleges violation of Section 1 of the Sherman Act, 15 U.S.C. Section 1, and jurisdiction under 15 U.S.C. Section 15. At issue are the reasonableness of certain "clearances" assertedly granted in motion picture exhibition licenses during 1980-82 to respondent Pacific Drive-In Theatres Corp. ("Pacific"), an exhibitor of motion pictures, by respondents Columbia Pictures Industries, Inc., Paramount Pictures Corporation, Twentieth Century Fox Film Corporation, Universal Film Exchanges, Inc., Warner Bros. Distributing Corporation and MGM/UA Entertainment

Co.,[1] each of which is a distributor of motion pictures (collectively "distributors"). After the completion of extensive discovery, Pacific and the distributors filed separate motions in the District Court for summary judgment, pursuant to Federal Rule of Civil Procedure 56(c), based on undisputed evidence that: (1) Pacific's Galleria theatre was in "substantial competition" with petitioner's Tarzana theatre, making the clearances reasonable; and, (2) the challenged clearances had no adverse effect on competition. The District Court granted the motions and entered judgment of dismissal in favor of all defendants. 1986-2 Trade Cas. (CCH) ¶ 67,231, at 61,170 (C.D. Cal. 1986). On appeal, reviewing the summary judgments *de novo*, the Ninth Circuit Court of Appeals unanimously affirmed. 828 F.2d 1395 (9th Cir. 1987). This petition follows that affirmance.

Petitioner claims that the Galleria's clearances over it were unlawful. When a distributor grants a clearance requested by an exhibitor as part of a motion picture license, it agrees not to license the same picture to play "day and date" (*i.e.*, simultaneously) at a cleared theatre. (CR 108:3.)[2] Clearances are a form of vertical territorial restriction which apply to the distribution and exhibition of motion pictures. Vertical territorial restraints are lawful under the Sherman Act's rule of reason if their effect is to

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[1] A separate list of respondents' parent, subsidiary and affiliated corporations, as required by Supreme Court Rule 28.1, is attached as Appendix A to this brief.

[2] Citations to the District Court record are in the following form: (CR x:y), in which "x" is the number of the document on the District Court's docket sheet and "y" is the consecutive page number therein supporting the material in this Brief. Citations to briefs filed in the Ninth Circuit are to the abbreviated title of the document, *i.e.* "Petitioner's Opening Brief on Appeal, at x." Citations to the present Petition for Writ of Certiorari are to "Petition, at x."

promote interbrand competition without unduly restraining intrabrand competition. *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 97 S.Ct. 2549 (1977).

Clearances substantially enhance interbrand competition — between showings of different motion pictures[3] — among motion picture exhibitors. A clearance protects the licensed theatre's box office gross potential from diminution by nearby theatres showing the same picture. Over the longer term, clearances also encourage exhibitors to make substantial investments in quality state-of-the-art theatres and to promote exhibition of licensed motion pictures to the public, without fear that competing theatres will act as "free riders," reaping the benefits without making similar substantial expenditures of their own funds. By increasing such interbrand competition, clearances also benefit theatre patrons, providing them with a greater choice of motion pictures to see.

In contrast, individual clearances minimally restrict intrabrand competition — competition between exhibitors showing the same motion picture — because they affect only specified nearby "cleared" theatres, limit those theatres' ability to exhibit only that single motion picture, and last only the few weeks that the picture is shown at the

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[3] As used herein, "interbrand" competition refers to the simultaneous showing at two theatres of two different motion pictures — *e.g.*, "SUPERMAN II" and "THE GREAT MUPPET CAPER" — which compete for the same patrons; theatres in "intrabrand" competition simultaneously show the same picture — *e.g.*, "ROCKY III" — and compete for the same patrons. Because distributors often have multiple pictures licensed for exhibition at the same time, "interbrand" competition between showings of different pictures may encompass competition for theatre patrons between different pictures licensed by the same distributor. Thus, the "intrabrand" competition restrained by clearances is much more limited than is the case with the typical "intrabrand" restraint, which applies to an entire product line.

licensed theatre. Clearances are much less restrictive than the normal intrabrand vertical territorial restraint, which applies to a manufacturer's entire product line, gives the dealer exclusive rights to a broad territory and often lasts several years.

In light of these considerations, clearances long have been deemed valid under the Sherman Act's rule of reason, *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 147, 68 S.Ct. 915 (1948), if the theatres are in "substantial competition" for patrons, *i.e.*, if they each draw substantial portions of their patronage from the same area. The clearances at issue here clearly were valid under the criteria of *Sylvania* and *Paramount*. They encouraged Pacific to build and operate its expensive state-of-the-art Galleria Theatre in Sherman Oaks, offering both distributors and theatre patrons additional motion picture exhibition choices in the area. However, their restrictive effect was only on intrabrand competition, preventing petitioner's theatre from simultaneously showing the same motion picture as the Galleria and thereby depriving petitioner of a potential "free ride" on the Galleria's investment and advertising. In effect, petitioner complains of nothing more than being deprived of this "free ride," and thereby being required to exhibit another motion picture, *i.e.* petitioner complains of being required to engage in interbrand competition with the Galleria.

In addition, the clearance at issue had an unusually limited effect on intrabrand competition. Petitioner's theatre routinely faced a simultaneous, and admittedly valid, clearance from one of three theatres in Woodland Hills, California. Petition, at 4. Thus, the Galleria's clearance affected petitioner only when the Galleria held a first run picture longer than the corresponding Woodland Hills theatre showing the picture. Petition, at 5. This happened only rarely. Even according to petitioner, it occurred no

more than thirteen times out of the hundreds of motion pictures exhibited in the area over an eighteen month period. It would be difficult to describe a less restrictive impact on intrabrand competition. Petitioner's Opening Brief on Appeal, at 9.[4] Moreover, the effect on petitioner itself was *de minimis*. On every such occasion, petitioner was able to exhibit some other subrun picture, either from the same or another distributor. (CR 89:69.)

Because petitioner admits its theatre and the Galleria were in substantial competition, (CR 89:30-31, 76), the pro-competitive effects of these clearances plainly outweighed their minimal impact on intrabrand competition and the Courts below properly found them to be valid.

III. THERE IS NO BASIS TO REVIEW AGAIN THE STANDARDS FOR SUMMARY JUDGMENT.

Petitioner suggests this Court should examine again the standards for summary judgment under F.R. Civ. P. 56, even though this Court has examined those standards extensively in recent years and devoted three significant decisions in 1986 to the subject. *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505 (1986); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348 (1986). Those decisions set forth adequate guidelines for the lower courts on the Rule's interpretation and on the importance of summary judgment as a procedure for the orderly conclusion of extended and

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[4] Pacific's analysis indicates an even smaller effect, that the Galleria's clearances delayed petitioner's sub-run licenses on only two occasions, costing t at most $2,281 in box office revenue. Pacific's Opposition Brief on Appeal, at 18-19; (CR 84:24-26; 85:133-34.)

complex litigation. *E.g. Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 2555 (1986) (summary judgment is an "integral part of the Federal Rules" which allows defendants to demonstrate that claims against them "have no factual basis").

Summary judgment is of special significance to dispose of antitrust cases, where the failure to dismiss unfounded claims may directly injure competition, chilling pro-competitive activity and imposing high economic costs on successful competitors. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 593-94, 106 S.Ct. 1348, 1360 (1986). Rule of reason cases are no exception; in appropriate situations, " 'the rule of reason can . . . be applied in the twinkling of an eye.' " *N.C.A.A. v. Board of Regents of the University of Oklahoma*, 468 U.S. 85, 109 n.39, 104 S.Ct. 2948, 2964-65 n.39 (1984) (quoting P. Areeda, The "Rule of Reason" in Antitrust Analysis: General Issues 37-38 (Federal Judicial Center, June 1981)). Indeed, with issues of motive and intent absent from the substantive standard for clearances, cases such as this are perfectly suited for summary adjudication.

In the face of these decisions, petitioner does not argue that this Court has given insufficient attention in recent years to summary judgment standards or that the Ninth Circuit *misapplied* those standards in this case. Rather, petitioner implicitly recognizes that the summary judgment standard it advocates, Petitioner's Opening Brief on Appeal, at 27; *cf.* Petition, at 21, would require reversal of *Anderson*, *Matsushita* and *Celotex*. (In urging the Ninth Circuit to reverse this summary judgment, petitioner did not even mention *Anderson* or *Matsushita* and included only one passing reference to *Celotex* in a footnote. Petitioner's Opening Brief on Appeal, at 17 n.2.)

Petitioner also suggests confusion and inconsistency in the Ninth Circuit after *Anderson*, *Celotex* and *Matsushita*.

Of course, such an "intra-circuit conflict" is not an appropriate matter for review by certiorari, but should have been resolved by petition for rehearing *en banc* to the Court of Appeals, a step petitioner never took. In any event, the Ninth Circuit's decisions belie such confusion. The only two[5] Ninth Circuit decisions cited by petitioner which postdate *Anderson, Celotex* and *Matsushita* — *National Basketball Ass'n v. SDC Basketball Club, Inc.*, 815 F.2d 562 (9th Cir.), *cert. dismissed sub nom. Los Angeles Memorial Coliseum Comm'n v. National Basketball Ass'n*, 108 S.Ct. 362 (1987) and *Barry v. Blue Cross of California*, 805 F.2d 866 (9th Cir. 1986) — are consistent with those decisions of this Court. Nor has the Ninth Circuit had any difficulty applying the rule of reason in Sherman Act cases on motions for summary judgment, *Barry v. Blue Cross of California*, 805 F.2d 866, 871 (9th Cir. 1986); *O.S.C. Corp. v. Apple Computer, Inc.*, 792 F.2d 1464, 1469-70 (9th Cir. 1986), including cases challenging vertical territorial restraints, *Ralph C. Wilson Industries, Inc. v. Chronicle Broadcasting Co.*, 794 F.2d 1359 (9th Cir. 1986); *Continental T.V., Inc. v. GTE Sylvania Inc.*, 694 F.2d 1132, 1135-36 (9th Cir. 1982).

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[5] The current status of the Ninth Circuit's decision in *R.C. Dick Geothermal Corp. v. Thermogenics, Inc.*, 827 F.2d 407 (9th Cir. 1987), cited repeatedly by petitioner, is uncertain. That decision was withdrawn from publication in the bound reporter, pending the Circuit's decision on a motion for rehearing. Respondents are informed that the original panel of the Ninth Circuit recently has re-affirmed that decision, but that a petition for rehearing *en banc* now is pending before the entire court. The opinion apparently has not yet been re-published. In any event, the opinion supports respondents' position here, because the Ninth Circuit in *R.C. Dick* affirmed a grant of summary judgment dismissing Sherman Act claims under the rule of reason.

IV. THE CLEARANCES AT ISSUE WERE REASONABLE BECAUSE THE THEATRES WERE IN SUBSTANTIAL COMPETITION.

A. "Substantial Competition" Is the Legal Standard for Evaluation of Clearances.

Petitioner makes little mention of substantial competition, the substantive standard for evaluation of clearances. That standard is settled by two decisions of this Court: *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 97 S.Ct. 2549 (1977), and *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 68 S.Ct. 915 (1948).

In *Sylvania*, this Court recognized that vertical territorial restraints (such as clearances), as restrictions on intrabrand competition, actually promote interbrand competition by protecting the selected retailer from the "free rider" effect, thereby making the brand's product line — heavily supported by that retailer — more competitive with other brands in the market. *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 54-55, 97 S.Ct. 2549, 2560 (1977). Vertical intrabrand territorial restrictions are lawful within the limits of the rule of reason because "[i]nterbrand competition . . . is the primary concern of antitrust law," *id.* 433 U.S. at 52 n.19. Thus, *Sylvania* makes clear that a finding of reasonableness is the only possible outcome where, as here, the restraint in question balances a significant enhancement to interbrand competition against a minor diminution of intrabrand competition.

Consistent with the later analysis in *Sylvania*, in *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 147, 68 S.Ct. 915 (1948), this Court approved clearances over theatres in "substantial competition" for patrons. The substantial competition standard is justified by the same

concerns over the "free rider" effect — in the context of motion picture exhibition — and the same interest in promoting interbrand competition among different pictures which justify vertical territorial restraints generally. As this Court agreed forty years ago in *U.S. v. Paramount*, the pro-competitive "justification [for clearances] was found in the assurance they give the exhibitor that the distributor will not license a competitor to show the film . . . at the same time [as the licensed exhibitor] . . . [which would cause] the exhibitor's expected income from the run . . . [to] be greatly diminished." *Id.* 334 U.S. at 145.[6]

Since 1948, the *U.S. v. Paramount* standard has withstood the test of time, having been examined and consistently applied by the lower courts. *E.g. Naumkeag Theatres Co. v. New England Theatres, Inc.*, 345 F.2d 910, 913 (1st Cir.), *cert. denied*, 382 U.S. 906 (1965); *Ayers v. Pastime Amusement Co.*, 283 F.Supp. 773, 786 (D.S.C. 1968); *Broadway & Ninety-Sixth Street Realty Co. v. Loew's, Inc.*, 21 F.R.D. 347, 355 (S.D.N.Y. 1958); *Fanchon & Marco v. Paramount Pictures, Inc.*, 100 F.Supp. 84, 90-91 (S.D. Cal. 1951), *cert. denied*, 345 U.S. 964 (1953), *aff'd*, 215 F.2d 167 (9th Cir. 1954), *cert. denied*, 348 U.S. 912 (1955); *Paramount Pictures Theatres Corp. v. Partmar Corp.*, 97 F. Supp. 552, 558 (S.D. Cal. 1951), *aff'd*, 200 F.2d 561 (9th Cir. 1952), *aff'd*, 347 U.S. 89, *reh'g denied*, 347 U.S. 931 (1954). Following the *Sylvania* decision, substantial competition has remained a viable standard. *Southway Theatres, Inc. v. Georgia Theatre Co.*, 672 F.2d 485, 504 (5th

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[6] Clearances have never been held unlawful *per se*. *Cf. United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 145, 68 S.Ct. 915, 923 (1948). Thus, petitioner's suggestion that the reclassification of certain formerly *per se* unlawful restraints to analysis under the rule of reason necessarily cautions courts against the grant of summary judgment, Petition, at 21-22, is inapposite here.

Cir. 1982); *Universal Amusements Co., Inc. v. General Cinema Corp. of Texas, Inc.*, 635 F. Supp. 1505, 1524 (S.D. Tex. 1985); Charge to Jury and Special Interrogatories to Jury at 26-28, *Quad Cinema Corp. v. Twentieth Century Fox Film Corp.*, 80 Civil 5650 (S.D.N.Y. April 19, 1984), attached as (CR 117:25-31).

B. Summary Judgment Was Appropriate on the Undisputed Facts.

Based on this well-established substantive standard, the lower courts properly granted respondents' motions for summary judgment. Because the issue here was reasonableness under the rule of reason, to defeat summary judgment petitioner had to demonstrate its ability to prove the *unreasonableness* of the challenged practice. At most, petitioner demonstrated only a fatal void between its pleadings and the testimony and other evidence provided by its own witnesses.

Petitioner was unable to show any disputed material facts negating the existence of substantial competition between its theatre and the Galleria. To the contrary, during depositions, petitioner's representatives repeatedly admitted the existence of substantial competition. (CR 89:30-31, 76; 108:12-13.) *See also*, Petitioner's Opening Brief on Appeal, at 21 ("if" the facts are as shown by the undisputed evidence, "it could strongly be presumed that the Galleria and TMT were in substantial competition and the [Galleria's] clearance over [TMT] was, perforce, reasonable").

The factual record leaves little doubt that petitioner's concessions were correct: the theatres were located on the same major thoroughfare, only a short distance apart, Petitioner's Opening Brief on Appeal, at 2; (CR 84:6; 90:542-545; 108:15); travel time between them was minimal

and no barriers to access existed, (CR 84:5; 89:12-13, 151-152); residents in the area were highly mobile, (CR 89:25-26, 152-154); residents of Los Angeles normally travel great distances for shopping and entertainment — indeed, Los Angeles, and especially the San Fernando Valley, is known as a "city on wheels," (CR 84:24, 34-73; 89:26); and, petitioner's theatre and the Galleria solicited patrons from broad overlapping areas, (CR 89:51-52). Petitioner also conceded the reasonableness of indistinguishable clearances over its theatre by the first run theatres in Woodland Hills. (CR 84:4; 89:6, 11, 22, 23, 29, 30, 75, 82, 83, 131, 132, 143; 90:542-545.) Finally, petitioner sought the same clearances over the Galleria from distributors (CR 89:84-89, 177-179; 90:526, 540, 541, 546)[7] that it now complains the distributors granted the Galleria over it.

Thus, the lower courts were correct in holding that petitioner's theatre and the Galleria were in substantial competition and that the Galleria's clearances were valid under the rule of reason. Summary judgment for respondents therefore was appropriate.

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[7] The requests by petitioner to clear the Galleria, among other evidence, establish the falsity of petitioner's contention, Petition, at 4, that artificial "zones" divided the San Fernando Valley and controlled the determination of substantial competition among Valley theatres. Obviously, such an artifice, even if true, would have no relevance to analysis of the market conditions on which the antitrust statutes are based. *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 46-47, 97 S.Ct. 2549, 2555-56 (1977).

V. PETITIONER PRESENTS NO FACTUAL BASIS FOR DISTINGUISHING THIS CASE FROM THE ORDINARY CLEARANCE CASE.

Petitioner tries to distinguish this clearance case from the usual "substantial competition" decision. First, petitioner contends that the clearances at issue were somehow unusual because they were obtained by a first-run theatre over a sub-run theatre. Petition, at 16. That contention is without merit. First run theatres *always* have cleared sub-run theatres; that has been one of the principal uses of clearances since 1948, when this Court recognized that clearances over sub-run theatres were necessary to protect a first-run theatre's box office gross potential. *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 145, 68 S.Ct. 915, 923 (1948).

Second, petitioner suggests the Galleria's decision to drop its clearance requests over Mann's Valley West theatre in 1984 as a distinguishing factor. Petition, at 17. This argument fails as a matter of law. Reasonable clearances, as permissible restraints, are not required in every situation where theatres are in substantial competition. *United States v. Loew's, Inc.*, 1971 Trade Cas. (CCH) ¶ 73,673, at 90,803 (S.D.N.Y. 1971). While the Sherman Act clearly distinguishes between reasonable and unreasonable restraints of trade, it does no more than prohibit those restraints found unreasonable. To suggest otherwise would turn the Sherman Act on its head, forcing the courts to begin considering claims based on the *failure* of business competitors to restrain trade. Obviously, petitioner's argument is nonsense.

Petitioner's second suggested distinction also ignores complex changes in market conditions for motion picture distribution. By 1984, those market conditions had changed

both nationwide and in the Valley to such an extent that the Galleria was forced to choose between demanding a clearance over the Valley West and obtaining certain quality first run films. During those years, distributors responded to the rapid emergence of the home VCR and cable and pay television as major market forces, and to rapidly escalating advertising and other promotional costs, by releasing their pictures in increasing numbers of theatres first-run during a shortening theatrical release period. (CR 89:211-212; 90:242-245, 250-251, 311-312, 370-371, 396, 425-426.) In the Valley, the impact of these national trends was accelerated by the area's increasing population base. (CR 89:112-113; 90:323, 406-407.)[8]

To license so many theatres, distributors had to convince exhibitors to drop or limit first-run clearances incompatible with wide distribution patterns. During this period, several traditional clearances in the Valley ended (such as the admittedly valid clearances by the Woodland Hills theatres over the Valley West). (CR 90:261-265, 312, 335-338, 353-357, 369-371, 380-382, 406-407, 432-433, 460-461.) The *last* clearances to end were the Galleria's clearances over the Valley West. Mann Theatres, petitioner's successor, contributed to the impact of these market changes on the

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[8] In concrete terms, the impact of these changing conditions is exemplified by the first run exhibition records for the "STAR TREK" series of motion pictures: the original "STAR TREK" opened first run in December 1979 at 857 screens nationwide and two in the Valley; "STAR TREK II" opened in June 1982 at 1621 screens nationwide, including three in the Valley; but by June 1984 "STAR TREK III" opened on 1966 screens nationwide — at that time the largest first run release ever — including *six theatres* in the Valley. (CR 107:3.) Ultimately, the Galleria's decision to drop its clearances over the Valley West was tied directly to Paramount's need for additional screens in the Valley for "STAR TREK III." (CR 59:14; 90:251-258, 281-288, 422-423.)

Galleria's clearances by investing substantial sums in renovation of the Valley West theatre and by bidding aggressively to exhibit top-quality first-run films, making its theatre an effective first-run competitor. (CR 85:121-23.)

Thus, it is undisputed that the Galleria's 1984 decision to drop its clearances over the Valley West was unrelated to the reasonableness of those clearances. Certainly that change, as the result of changing market conditions several years after the fact, does not support petitioner's suggested inference that the Galleria's clearances were unreasonable in 1980-82.

VI. PETITIONER HAS FAILED TO ESTABLISH ANY HARM TO THE COMPETITIVE PROCESS.

Petitioner simply ignores its failure to establish injury to competition, which was the alternate basis for the decisions below. Because the antitrust laws focus on the preservation of competition, and not on any one competitor, to show a violation of Section 1 petitioner must show both that the Galleria's clearances were unreasonable and that they harmed the competitive process. *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488, 97 S.Ct. 690, 697 (1977).

Petitioner's suggested injuries, its supposed losses in box-office revenue and the assertedly forced sale of its assets to Mann Theatres at a "distressed" price, Petitioner's Opening Brief on Appeal, at 3, 8-9; *cf.* Petition, at 7, do not satisfy that requirement of injury to competition. Petitioner's inability to license a few specific sub-run films did not injure competition, because those films were licensed instead to other nearby sub-run theatres, (CR 89:69); at most, the Galleria's clearances rearranged the locations of those few sub-run films.

The sale of TMT's business also did not adversely affect competition. TMT was replaced by Mann's Valley West, a first-class theatre and a vigorous competitor, which bid aggressively for film licenses and eventually became a first-run theatre. Petitioner's Opening Brief on Appeal, at 3, 7, 10, 26-27. If anything, consumer choice increased and competition improved.

Whatever losses were suffered by petitioner resulted not from any injury to competition, but directly from enhanced competition among motion picture exhibitors when the Galleria theatre opened. That petitioner may have failed, by its own unwillingness or inability, to meet the Galleria's increased competition, should be of no concern to the antitrust laws.

CONCLUSION

For the foregoing reasons, respondents submit that this case is not appropriate for discretionary review. The petition for writ of certiorari should be denied.

DATED: January 29, 1988

Respectfully submitted,

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APPENDIX A

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Rule 28.1 Listing

The News Corporation Limited
Satellite Television PLC
William Collins PLC
News International-Hachette LTD.
Trafford Park Printers LTD.
News (UK) LTD.
British Movietonews LTD.
CBS/Fox Video (Holdings) Limited
CBS/Fox Video Limited
UK Film Distributors Limited
Servicios Dist. De Films Ltda. (Brazil)
Col-Fox Servicios Dist. De Films Ltda. (Brazil)
Cinemas Fox-Severiano Ribeiro LTD. (Brazil)
Northern Star Holdings LTD.
Fox/Col Film Distributors Inc. (Panama)
MDF SRL (Venezuela)
Corsair
Grenada Partnership
Fox-UGC S.A. (Belgium)
Columbia-Fox (Denmark)
Columbia-Fox O.E. (Greece)
EPS Entertainment Programming Services LTD. (Canada)
Puerto Rican Film Service (Puerto Rico)
Elle Publishing
Games Management Services
East-West Airlines

Independent Newspapers LTD. (New Zealand)
Wimmera Mail Times PTY LTD.
Advertiser-News Weekend Publishing PTY LTD.
Lotto Management Services PTY LTD.
Computer Power Group Holdings PTY LTD.
Far North Publishing Company PTY LTD.
AYR Newspapers PTY LTD.
Spectak Productions PTY LTD.
Westernport Publishing Co. PTY LTD.
Leader Westernport Printing PTY LTD.
Broadglen Publishing
Victoria Bookshops LTD.
Ansett Transport Industries LTD.
Salmat Direct Marketing PTY LTD.
Automail Holdings PTY LTD.
Consumer Production Marketing Services PTY LTD.
Australian Newsprint Mills Holdings LTD.
Herald Sun Travel PTY LTD.
Post Courier LTD.
Ravette LTD.
Mercury Air Freight Holding LTD.
Advertiser News Weekend Publishing
Company PTY LTD.
Clare Street Investments PTY LTD.
The MacQuarie Library PTY LTD.
Podlich Enterprises PTY LTD.
Anspin PTY LTD.
Quest Media Holdings PTY LTD.
Herald Press PTY LTD.

Provincial Newspapers (QLD) LTD.
Lanmere PTY LTD.
Farmer Publications PTY LTD.
Gulf + Western, Inc.
Warner Communications Inc.
MGM/UA Communications Co.
Turner Broadcasting System, Inc.
The Decurion Corporation
Compare Data Corporation
Cinema Park Drive-In Theatre, Inc.
Ed-Pac Drive-In Theatre Corp.
Film Bond Services, Inc.
MCA Inc.
Two-Beat Music Corp.
Discovision Associates
Saticoy Technology, Inc.
T.E.M. Programs International
Mood Music Company, Inc.
Fontaine Music Corp.
Quantum Media, Inc.
Rancom Films, Inc.
Supreme Music Corporation
Western Costume Co.
MPD Leasehold Corp.
Afram Films, Inc.
American Motion Picture Export Company, Inc.
Motion Picture Export Association of America, Inc.
Motion Picture Export Association of America in Rome
Cinema International Corporation N.V. (Netherlands)

Cineplex Odeon Corporation (Canada)
Alan Hutchison Publishing Company Limited (England)
Eugene Music Limited (England)
Evita Music Limited (England)
Jeeves Music Limited (England)
Radio Music Britain Ltd.
Rawiou Music Limited (England)
Spoone Music Limited (England)
Valley Music Limited (England)
United International Pictures B.V., a Partnership (Netherlands)
Pincus-Gil Music Pty. Limited (Australia)
Spoone Music Pty. Limited (Australia)
Tangerine Music Pty. Limited (Australia)
Regent Investments Pty. Limited (Australia)
Town Cinema Investments Pty. Ltd. (Australia)
The Coca-Cola Company
Coca-Cola Enterprises Inc.
TCC Beverages Limited
Consolidated Coca-Cola Bottling Company
Columbia Pictures Entertainment, Inc.
De Laurentiis Entertainment Group, Inc.
Delphi Film Associates
Delphi Film Associates III
Showscan Film Corporation